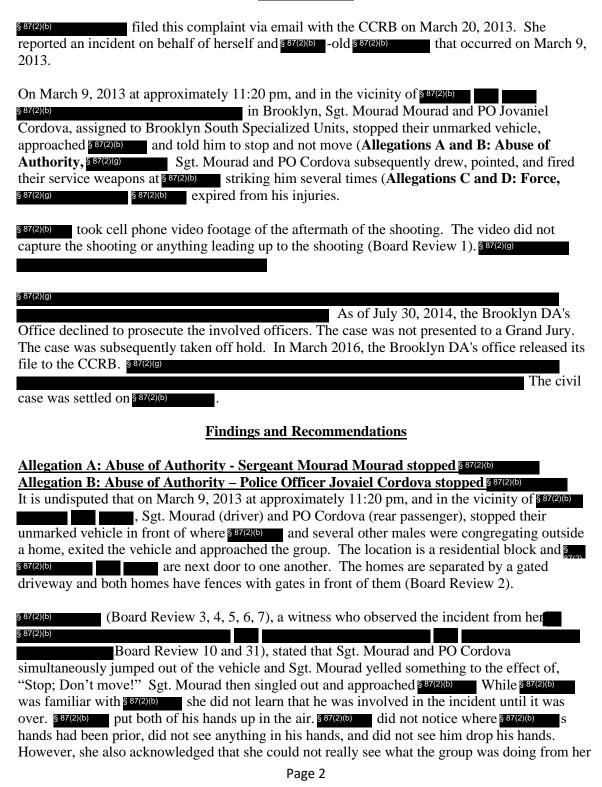
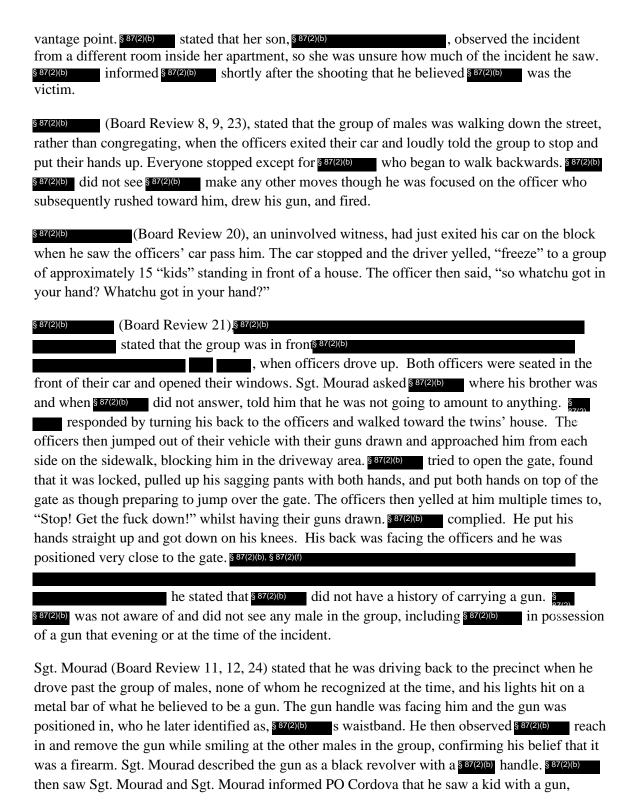
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	▼ Force	☐ Discourt.	☐ U.S.
Joy Almeyda	Squad #1	201301992	✓ Abuse	O.L.	Injury
Incident Date(s)	Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Saturday, 03/09/2013 11:20 PM	§ 87(2)(b)		67	9/9/2014	9/9/2014
Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time	e Received at CC	RB
Wed, 03/20/2013 6:17 PM	CCRB	On-line website	Wed, 03/2	20/2013 6:18 PM	ſ
Complainant/Victim T	ype Home Addre	ess			
Witness(es)	Home Addre	ess			

Witness(es)		Home Addr	ess	
Subject Officer(s)	Shield	TaxID	Command	
1. POM Jovaniel Cordova	15786	946459	PBBS SU	
2. SGT Mourad Mourad	01539	936055	PBBS SU	
Witness Officer(s)	Shield No	Tax No	Cmd Name	
1. SGT Harry Santiago	3465	918285	PBBS SU	
2. DT3 John Hoder	30200	935026	PBBS SU	
3. LCD Jose Ortiz	00000	920682	PBBS SU	
4. POM Piero Lasaponara	07631	947157	PBBS SU	
5. POM Adam Conlin	07146	946871	PBBS SU	
Officer(s)	Allegation			Investigator Recommendation
A.SGT Mourad Mourad	Abuse: Sergeant Mourad Mourad stopped \$87(2)(b)			
B.POM Jovaniel Cordova	Abuse: Police Officer Jovaniel Cordova stopped § 87(2)(b)			
C.SGT Mourad Mourad	Force: Sergeant Mourad Mourad fired his gun at \$87(2)(b)			
D.POM Jovaniel Cordova	Force: Police Off	icer Jovaniel (Cordova fired his gun at	

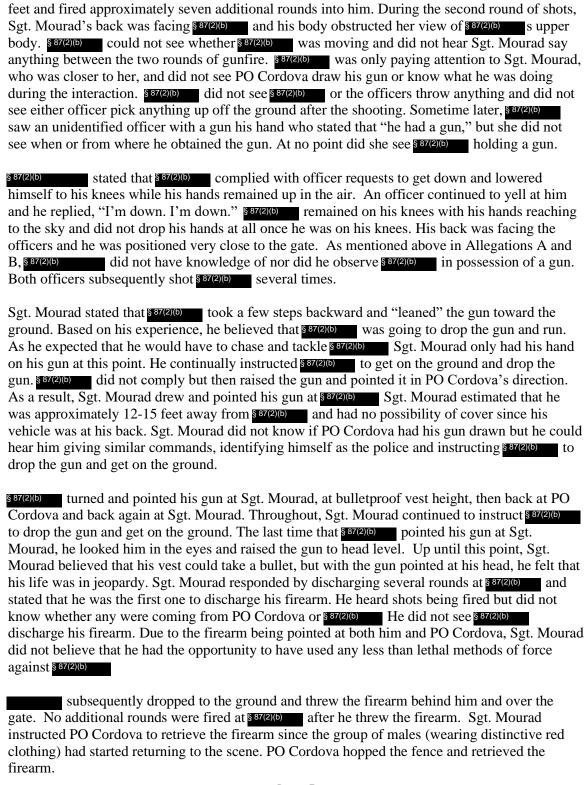
Case Summary





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provided his description and instructed PO Cordova to exit the vehicle. PO Cordova exited the vehicle and Sgt. Mourad pulled the car forward three to five feet and past § 87(2)(b) and then exited, with \$87(2)(b) and the officers forming a triangle. Sgt. Mourad yelled, "Police! Get down on the ground. Drop the gun!" The entire group, except for \$87(2)(b) fled northbound and \$100. kept the gun out the entire time. PO Cordova (Board Review 13, 14, 25) observed a group of black males gathered on the street as they were driving. Sgt. Mourad yelled, "gun, gun, gun!" PO Cordova then jumped out of the vehicle with his shield out and flanked left while Sgt. Mourad went to the right of the group. The group scattered except for \$57(2)(5) As PO Cordova ran up to where the group had been, he observed § 37(2)(b) pointing a gun, which he described as a silver revolver at Sgt. Mourad. PO Cordova pointed his gun at \$87(2)(6) and yelled three times, "Police, drop the gun!" An officer may stop an individual when there is reasonable suspicion to believe that an individual has committed, is committing, or is about to commit a crime, People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 15). Officers are entitled to rely and act based on information provided by a fellow officer. People v. Ketcham, 93 N.Y.2d 416, 419-420 (1999) (Board Review 16). Allegation C: Force - Sergeant Mourad Mourad fired his gun at § 87(2)(b) Allegation D: Force - Police Officer Jovaniel Cordova fired his gun at §87(2)(b) stated that when Sgt. Mourad yelled stop, §87(2)(b) put both of his hands up in the air. Sgt. Mourad said something to \$87(2)(b) but she could not hear what he said or whether responded. As previously noted, § 37(2)(b) did not see § 37(2)(b) drop his hands once they were up. §87(2)(b) had been in front of the gate, but began moving back toward the driveway two driveways down from § 87(2)(b) s building § 87(2)(b) point, \$87(2)(b) believed that a stop and frisk was occurring so she opened her window and looked down at her phone for a couple of seconds to set her phone to video record. She then observed Sgt. Mourad draw, point, and shoot § 37(2)(b) one time from approximately three to four feet away [Board Review 17). \$87(2)(5) had been standing by the gate and facing Sgt. Mourad when he was shot. § \$7(2)(b) fell backward onto the ground in the driveway and then onto his right side. Sgt. Mourad approached § \$7(2)(5) as he was on the ground, stood over him near his Page 4



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PO Cordova stated that as he was running toward \$87(2)(b) he assumed that \$87(2)(b) did not see him coming as \$87(2)(b) was running in his direction (northbound) with the gun still in his hand. After he yelled at \$87(2)(b) to drop the gun, \$87(2)(b) looked at him, turned, and pointed the gun at PO Cordova. \$87(2)(b) then went back and forth a few times, pointing the gun at Sgt. Mourad and then at PO Cordova while backing up into the driveway. This back and forth movement lasted approximately four to five seconds and the officers were approximately eight to nine feet away from \$87(2)(b) As \$87(2)(b) pointed the gun at Sgt. Mourad again, both Sgt. Mourad and PO Cordova discharged their weapons at the same time at \$87(2)(b) \$87(2)(b) made no verbal statements prior to the shooting and PO Cordova stated that he fired at \$87(2)(b) with the intention of protecting Sgt. Mourad. PO Cordova stopped firing when \$87(2)(b) ceased to be a threat. \$87(2)(b) fell into the fetal position and the firearm landed to \$87(2)(b) and recovered the firearm as a safety precaution because the males that had previously scattered had started returning to the area.

According to the autopsy report, sustained seven gunshot wounds (some traveling back to front and some from front to back), one graze injury, and four shrapnel injuries. The autopsy did not determine the chronology of the wounds. No fouling or stippling of the skin was seen on any of the gunshot wounds and no gunshot powder residue was visible on any of solution or in the wound tracks. The report made no mention of shoring, an exit wound pattern that occurs when the skin is in contact with another object (such as the ground) when the bullet exits (Board Review 35). Dr. Melissa Pasquale, of the ME's office (though not the doctor who conducted the autopsy), was consulted to review the autopsy findings (Board Review 22). She could not determine solution when shot, or confirm or refute solution so assertion that Sgt. Mourad stood over solved while he was on the ground for the final shots. She stated that there was no evidence (fouling, stippling) of close range fire of less than two feet distance or evidence by way of a wound pattern (shoring) typically associated with a bullet striking someone whilst that body part was against the ground. Solved solved solved striking the metal gate/fence behind him.

A .38 caliber RG Industries revolver and four .38 caliber cartridges were vouchered as part of the investigation (Board Review 41).

The Medical Examiner's Office conducted DNA tests on 3 swabs from the firearm allegedly possessed by S87(2)(6) Swab 1.1 was taken from the sides of the trigger and the trigger guard. DNA testing on swab 1.1 found a mixture of at least two people's DNA, but S87(2)(6) was excluded as a contributor [Defined in the report's appendix as: For the locations where the comparisons could be made, one or more of the DNA alleles seen in an individual's DNA profile were not seen in the mixture and this absence cannot be explained. Therefore, this person can be ruled out as a contributor.] Swab 1.2 was taken from the textured area of hand grips, and swab 1.3 was taken from the textured area of the hammer and cylinder release. The DNA samples from swabs 1.2 and 1.3 were not suitable for comparison [Defined in the report's appendix as: The DNA results on the evidence are either too incomplete or too complex to be the basis for

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conclusions regarding the source of the DNA.] (Board Review 27). One latent print was developed from the revolver but it belonged to an NYPD Crime Scene officer (Board Review 26). According to Patrol Guide Procedure 203-11, only that amount of force necessary to overcome resistance will be used to effect an arrest. Deadly physical force will be used ONLY as a last resort and consistent with Department policy and the law (Board Review 28).

The court stated in <u>People v. Finlayson</u>, that officers cannot be required to unreasonably expose themselves to serious injury or death and therefore may take protective measures, such as drawing and pointing their firearms, when reasonable to do so under the circumstances. <u>People v. Finlayson</u>, 76 A.D.2d 670 (1980) (Board Review 29). <u>People v. Livigni</u> found that officers were justified in pointing their guns at the occupants of a car upon observing an empty holster on the front seat. People v. Livigni, 88 A.D.2d 386 (1982) (Board Review 30).

§ 87(2)(g)
§ 87(2)(g)
Civilian and Officer CCRB Histories
• This is the first CCRB complaint to which \$87(2)(6) has been a party (Board Review 33). • \$87(2)(9)
3 3 or (≥)(9)
Page 7

§ 87(2)(g)

- PO Cordova has been a member of service for 11 years, five years at the time of the incident. At the time of the incident, he had been a subject of 11 allegations in three cases. Currently he has been the subject of 24 allegations in nine cases. He has one other incident in which he was alleged to have drawn his gun, 201301007, and was exonerated. He was alleged to have pointed his gun at \$87(2)(6) for this incident (spinoff \$87(2)(6) but she was uncooperative at that time and her allegation was truncated. PO Cordova has two substantiated allegations for entries, in 201301007 and 201606975. In the first, the Board recommended instructions, but the NYPD declined to prosecute. In the second, the Board recommended Command Discipline B, and the department imposed command level instructions.
- Sgt. Mourad has been a member of service for 14 years, eight years at the time of the incident. He was the subject of six complaints, involving 24 allegations at that time and has not been the subject of any complaints since this incident. Sgt. Mourad was exonerated of a gun drawn allegation in 200609996 and has never been the subject of a substantiated allegation. Sgt. Mourad was involved in one prior firearms discharge in 2011. The Firearms Discharge Review Board determined that there were no violations of departmental guidelines and no corrective action was taken (Board Reviews 37, 40).

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- The family of (1970) filed a Notice of Claim with the City of New York, claiming unreasonable force; assault and battery; wrongful death; pain and suffering; pre-death conscious pain and suffering; intentional infliction of emotional distress; negligent infliction of emotional distress; loss of enjoyment of life; medical and funeral expenses; negligent training; negligent supervision; negligent planning, including failure to adequately discipline, negligent retention and hiring; deprivation of constitutional, civil and common law rights; negligent hiring and retention of incompetent and unfit police employees; negligent supervision, training and instruction of employees; and respondent superior liability, and seeking \$20,000,000 as redress. On [887(2)[5]], prior to going to trial, the parties agreed to a settlement without admitting any fault of liability. The action was dismissed against the defendants, and the City agreed to pay the plaintiffs \$250,000.

● [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Allegations Not Pleaded

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§ 87(2)(g)			
Squad No.:			
Investigator			
Investigator:	Signature	Print Title & Name	Date
Squad Leader:			
	Signature	Print Title & Name	Date
Reviewer:	C: our oderwa	Deint Title 9- Nome	Data
	Signature	Print Title & Name	Date